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In the Matter of

Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

CC Docket No. 92-297

First Report and Order and Fourth Notice of Proposed Rulemaking

Texas Instruments, Inc. ("TI"), by its attorneys, hereby submits its Reply to Motorola Satellite Communications, Inc.'s ("Motorola") Opposition to TI's Petition for Reconsideration in the above-captioned proceeding ("*First Report and Order*" or "*Fourth Notice*").¹

As TI stated in its comments in response to the *Fourth Notice* and in its petition for reconsideration, TI supports the Commission's band plan. With clarification and additional

¹ Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services (First Report and Order and Fourth Notice of Proposed Rulemaking), CC Docket No. 92-267, FCC 96-311 (rel. July 22, 1996).

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spectrum, the plan will allow LMDS applicants to move forward, enabling consumers to receive a full range of interactive video, voice and data services in competition with traditional cable and telephone carriers.²

The Commission's *First Report and Order* left ambiguous, however, the process that should be utilized in order to demonstrate that sharing is feasible in the 29.1 - 29.25 GHz band. Indeed, Motorola's opposition illustrates the level confusion that has resulted. Accordingly, TI respectfully requests that the Commission clarify the technical and procedural steps that are necessary to demonstrate that non-harmful sharing can exist between LMDS and NGSO/MSS licensees.

In seeking clarification, TI is not attempting to disrupt the Commission's spectrum plan for the 28 GHz band, but instead seeks to effectuate the compromise it embodies. In this regard, Motorola is incorrect in arguing that TI's request is inconsistent with the sharing arrangement reached in 1994.³ As TI has indicated previously, the 1994 sharing arrangement was based on achieving a successful negotiated rulemaking process for sharing, with 2 GHz of spectrum available for LMDS operators.⁴ The NRMP was unsuccessful, however, since no consensus was reached. LMDS operators do not have sufficient spectrum

² As stated in its petition for reconsideration, TI also supports the Commission's decision to designate additional spectrum for LMDS. *See Fourth Notice* at ¶ 39. The Commission's proposal to allocate 300 megahertz of spectrum at 31 GHz to LMDS, and the effort to identify and allocate additional spectrum for LMDS in the 25.25 - 27.5 GHz band, will benefit consumers.

³ *See Motorola* at 2.

⁴ *See Reply Comments of Texas Instruments, Inc., Third Notice of Proposed Rulemaking and Supplemental Tentative Decision*, CC Docket No. 92-297, at 8 (Oct. 10, 1995).

to adequately accommodate subscriber-to-hub links. Hence, TI is only attempting to reach an understanding which would allow sharing feasibility to be demonstrated for LMDS return links, as the Commission has invited it to do.

II. CLARIFICATION IS NECESSARY DUE TO THE CONFUSION THAT HAS RESULTED WITH RESPECT TO THE PROCESS FOR EXPANDED USE BY LMDS OF THE 29.1 - 29.25 GHZ BAND.

In the *First Report and Order*, the Commission determined that LMDS subscriber-to-hub links would not be permitted in the 29.1 - 29.25 GHz band, because of the constraints that would need to be placed on either Motorola's NGSO/MSS system feeder links or LMDS subscriber-to-hub links.⁵ The Commission acknowledged, however, that this solution was not ideal, and stated that the Commission "consider[s] it important" to provide a non-contiguous segment of the band "for isolating at least some of the inbound subscriber channels from the outbound channels."⁶ Thus, the Commission indicated that the constraint on LMDS subscriber-to-hub links could be revisited in the future.⁷

What was left unclear in the *First Report and Order*, however, was the procedural process necessary for removal of the LMDS subscriber-to-hub prohibition in the 29.1 - 29.25 GHz band. TI therefore sought clarification of the steps it must follow to work toward

⁵ *First Report and Order* at ¶ 37.

⁶ *Fourth Notice* at ¶ 98.

⁷ *First Report and Order* at ¶¶ 37, 71; *Fourth Notice* at ¶ 98.

removal of the restriction.⁸ The need for clarification was made evident by Motorola's own opposition to TI's petition. Motorola asserted, without support from the record, that the restriction on subscriber-to-hub links could be removed by the Commission only through a new notice and comment rulemaking and that Motorola had independent authority to approve or disapprove the sharing of the spectrum band.⁹ In reality, the Commission clearly could revisit the matter through procedures far less cumbersome, such as through the issuance of an experimental license and, following testing and analysis conducted jointly by TI, Motorola, and the Commission, grant of a waiver for LMDS licensees on a non-interference basis.

Motorola is also incorrect in suggesting that NGSO/MSS licensees will somehow have the ultimate decision over the adequacy of any sharing criteria that is devised by LMDS proponents.¹⁰ Such a grant of Commission authority to private parties would constitute an impermissible delegation of administrative power.¹¹ It would also be poor public policy, since NGSO/MSS interests have no incentive to cooperate with efforts to develop a sharing regime. In fact, gauging from the tone of Motorola's opposition, it can be concluded that Motorola may be less than cooperative in participating in the testing that will be necessary to

⁸ In this regard, TI is compelled to point out that Motorola is flatly incorrect in stating that TI has asked the Commission to commit to a "time frame" for changing the rule. Motorola at 3. TI has made no such request.

⁹ Motorola at 3, 5-6.

¹⁰ See Motorola at 3.

¹¹ Delegations of administrative authority are suspect when they are made to private parties, particularly to entities whose objectivity may be questioned on grounds of conflict of interest. See *Eagles v. United States*, 329 U.S. 304 (1946).

developing a sharing criteria. Motorola stated flatly in its opposition that it "does not now believe sharing is possible with subscriber-to-hub communications in the 28 GHz band," and that "absent *compelling* new evidence" the Commission and interested parties "have spent enough time and resources on this matter."¹²

Thus, in order to provide LMDS proponents with a fair opportunity to demonstrate that sharing is feasible in the 29.1 - 29.25 GHz band, the Commission must articulate the process by which TI and others should proceed. Specifically, the Commission should clarify that LMDS operators willing to engage in tests of potential sharing arrangements will be eligible for experimental licenses. The Commission should also state that a satisfactory sharing regime consists of one that does not cause "harmful interference" to the data transmissions of NGSO MSS feeder links, a determination that must ultimately be made by the Commission staff, not by private parties. Finally, the Commission should indicate a willingness to grant waivers of its subscriber-to-hub prohibition if adequate sharing is demonstrated.

By clearly resolving these questions the Commission will enable LMDS proponents to proceed with efforts to resolve interference concerns in the 29.1 - 29.25 GHz band, and ensure that no impermissible delegation of administrative power occurs. Furthermore, TI requests that the Commission respond to these issues promptly in order to permit planning for LMDS systems to move forward to completion.

¹² Motorola at 6 (emphasis added).

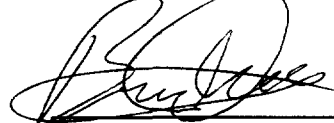
III. CONCLUSION

TI enthusiastically supports the Commission's allocation of spectrum to LMDS, and the tentative auction schedule. TI again requests that the Commission move expeditiously to auction and license LMDS systems. The auction will benefit consumers by spurring innovative competition to traditional cable and telephone systems.

TI's petition for reconsideration and this reply are further evidence of TI's desire for rapid authorization of LMDS. By clarifying several aspects of its *First Report and Order* concurrently with the Commission's preparations for auctions, and deliberations with respect to allocating additional spectrum at 31 and 25.25 - 27.5 GHz, the Commission can clear potentially time-consuming roadblocks in the development of LMDS systems.

Respectfully submitted,

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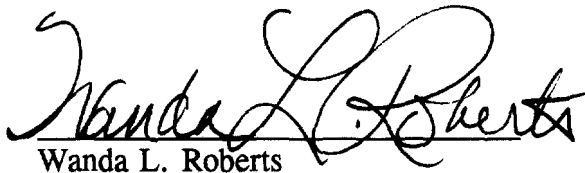
Its Attorneys

November 1, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 1996, I caused copies of the foregoing "Reply to Opposition in Response to Petition for Reconsideration of Texas Instruments, Inc." to be mailed via first-class postage prepaid mail to the following:

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